

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

v.

07 Cr. 543 (KMK)

YEHEZKEL ELIA and  
DAVID ELYAHO

**DECLARATION OF  
JARED J. SCHARF**

Defendants.

-----X

JARED J. SCHARF, being duly sworn, declares under penalties of perjury,  
pursuant to 28 U.S.C. 1746, that the following is true and correct:

1. I am the attorney for defendant Yehezkel Elia. I make this  
Declaration in support of defendant Elia's motion for an Order precluding certain  
evidence and arguments.
2. Attached hereto as Exhibit A is a copy of my letter to Assistant United  
States Attorney Cynthia Dunne, dated May 7, 2008.
3. Attached hereto as Exhibit B is a copy of my letter to Ms. Dunne, dated May  
13, 2008.
4. Attached hereto as Exhibit C is a copy of Ms. Dunne's letter to me, dated May  
15, 2008.
5. Attached hereto as Exhibit D is a copy of an I.R.S. Form W7-P (Application  
for Preparer Tax Identification Number).
6. Attached hereto as Exhibit E is an excerpt from the transcript of proceedings  
in *United States v. Josephberg*, S.D.N.Y. S04 Cr. 1002 (CLB).

7. Attached hereto as Exhibit F is a copy of defendant Yehezkel Elia's Petition for Relief From The Seizure, dated August 17, 2001, which we received from the government.



Jared J. Scharf

Dated: White Plains, New York  
May 23, 2008

**\*\*\*\*\* EXHIBIT A \*\*\*\*\***

**JARED J. SCHARF**  
ATTORNEY AT LAW  
1025 WESTCHESTER AVENUE • SUITE 305  
WHITE PLAINS, NEW YORK 10604  
(914) 682-9777

JARED J. SCHARF

ADAM L. SCHARF \*

\*NY, NJ BARS

May 7, 2008

VIA FACSIMILE (993-1980)  
and FIRST CLASS MAIL

Cynthia Dunne  
Assistant United States Attorney  
United States Attorney's Office  
300 Quarropas Street  
White Plains, New York 10601

**Re: *United States v. Yehezkel Elia***

Dear Ms. Dunne:

Thank you for the discovery you have provided to date.

In addition, could you please provide us the following additional items:

1. Results of tax examinations of tax returns prepared by Paul H. Lenok, preparer SSN 088-40-9504.
2. Results of criminal investigations of taxpayers whose tax returns were prepared by Paul H. Lenok, including but not limited to special agent's reports..
3. All information, including but not limited to "returns" and "return information" and "taxpayer return information" (as defined in I.R.C. Section 6103(b)), and including but not limited to investigations and background checks, in the possession of the United States 1/ pertaining to potential jurors and members of the jury panel for the week of June 9.

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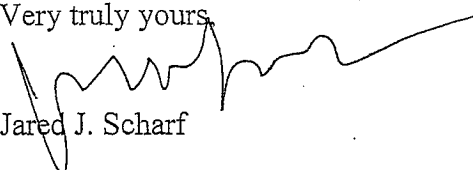
1/ "Possession of the United States" includes the United States Attorney's Office for the Southern District of New York, as well as any agent of the Internal Revenue Service and any other person working with the United States Attorney who possesses such information for purposes of this trial.

Cynthia K. Dunne, Esq.  
May 7, 2008 Page 2

4. Contact information for former Special Agent Herbert Eis.
5. Special Agent's Reports and supporting evidence pertaining to Paul H. Lenok.
6. Notes of interviews, memoranda of interviews, written communications to and from and in behalf of Paul Lenok, concerning any taxpayer, including but not limited to Yehezkel Elia.

Thank you for your cooperation.

Very truly yours,

  
Jared J. Scharf

cc: Joseph A. Vita, Esq.

**\*\*\*\*\* EXHIBIT B \*\*\*\*\***

**JARED J. SCHARF**  
ATTORNEY AT LAW  
1025 WESTCHESTER AVENUE • SUITE 305  
WHITE PLAINS, NEW YORK 10604  
(914) 682-9777

JARED J. SCHARF

ADAM L. SCHARF \*

\*NY, NJ BARS

May 13, 2008

VIA FACSIMILE (993-1980)  
and FIRST CLASS MAIL

Cynthia Dunne  
Assistant United States Attorney  
United States Attorney's Office  
300 Quarropas Street  
White Plains, New York 10601

Re: United States v. Yehezkel Elia

Dear Ms. Dunne:

In addition to the items we requested last week, we respectfully request that you also provide us the following items:

1. The cell phone number or numbers for Harrij Zherka, known as "Lily" during the period 1999-2003. We believe that Lily embezzled funds from Sneaker Mania, Inc. by writing checks on the Sneaker Mania checking account payable to various accomplices and by sharing the proceeds with the accomplices. She used the rubber stamp signature for Yehezkel Elia. We would like her cell phone number in order to establish that Lily had a connection with these various accomplices.

2. I am informed that the compact disc you provided us is in "Tiff" format. If you have the data in Excel format, we would appreciate that. If not, please provide it in PDF.

Yesterday, we discussed the effort required by the government to comply with our request for I.R.S. data concerning Paul Lenok. We believe that the I.R.S.'s requirement that paid preparers use an ID number implies that the I.R.S. maintains a file on paid preparers and that the information we requested may be located in that file. If that is true, the effort you described may be avoided. Accordingly, we renew that request. As I explained, the relevance of the se requests to the defense is that the information is needed to reply to a potential argument by the

Cynthia K. Dunne, Esq.  
May 13, 2008 Page 2

government that the defense could have located and presented evidence that Lenok was negligent or that he acted fraudulently in the preparation of other taxpayers' tax returns prepared by Lenok. As I stated, AUSA Stanley J. Okula made such an argument in the government's rebuttal summation in *United States v. Josephberg* last year. I enclose the relevant portion of the Josephberg transcript.

Thank you very much.

Very truly yours,

Jared J. Scharf

enclosure

cc: Joseph A. Vita, Esq.

**\*\*\*\*\* EXHIBIT C \*\*\*\*\***



U.S. Department of Justice

United States Attorney  
Southern District of New York

United States District Courthouse  
300 Quadropas Street  
White Plains, New York 10601

May 15, 2008

**BY FAX**

Jared Scharf, Esq.  
1025 Westchester Avenue, Suite 305  
White Plains, New York 10604

Re: US v Elia and Elyaho  
07 Cr 543 (KMK)

Dear Mr. Scharf:

This letter responds to your various recent discovery requests.

**Paul Lenok**

This Office has attempted to determine if there is any information relevant to your request for information pertaining to dead accountant and tax preparer Paul Lenok and his clients (requests 1, 2, 5 and 6 of your May 7 letter). I have been advised that the IRS only maintains computerized preparer information for three years and that it does not cross-reference its audits, correspondence or witness interviews by tax preparer. In addition, retrieval of Lenok's records is further complicated because apparently he did not file returns using his tax preparer identification number. Accordingly, retrieval and review of Lenok's client documents -- that may or may not have responsive information -- could take weeks and possibly longer. Since neither the dead accountant nor his other clients are on trial and since Lenok, obviously, will not be testifying, we believe that any such information would not be relevant. Accordingly, absent a court order, the IRS will not be retrieving and reviewing the transcripts and underlying tax records of the 700 individual and corporate taxpayers whose tax returns were prepared by Lenok. If you believe that Mr. Lenok authored correspondence that is relevant to your defense or that he engaged in conduct that is material to your defense, then I suggest that you contact his other clients and/or subpoena his files from his representatives.

Juror Tax Return Information

This Office will not be providing you with tax return information pertaining to potential jurors. If you have specific questions about a juror's potential bias, then those questions should be included in a proposed voir dire. As you well know, defendants were once entitled to an indication (simply a "yes" or "no") whether prospective jurors had been the subject of an audit or tax investigation (through the former version of 26 U.S.C. Section 6103(h)(5)), but they no longer are, by virtue of the Taxpayer Relief Act of 1997 (P.L. 105-34, effective August 1997), which deleted that provision.

Former Special Agent Herbert Eis

You have requested contact information for former Special Agent Herbert Eis. We have contacted Mr. Eis and he has not authorized us to provide you with his personal contact information. If you are looking for Mr. Eis in order to serve a trial subpoena, then we may be able to assist you by arranging for him to receive a subpoena, however, as you know Mr. Eis no longer works for the Internal Revenue Service. Please provide us with further information so that we can determine if we can assist you.

Ms. Zherka

We will not be providing you with personal information regarding Ms. Zherka. If you provide us with specific instances of alleged theft and/or embezzlement, then we will investigate the matter, however, without cause shown, we will not facilitate a fishing expedition into the details of her personal life.

Government Exhibits

Before sending out the Government Exhibits for scanning I offered you and Mr. Vita with the choice of having the documents in either "pdf" or "tiff" format. In addition, before sending the exhibits out, I confirmed with both you that you would accept

the exhibits in "tiff" format. Accordingly, if at this point you would like to have the documents converted into another format, then you should have your client arrange for such.

Very truly yours,

MICHAEL J. GARCIA  
United States Attorney

By: Cynthia K. Dunne  
CYNTHIA K. DUNNE  
SEETHA RAMACHANDRAN  
Assistant United States Attorneys  
(914) 993-1913

Enclosure

cc: Joseph A. Vita, Esq. (by fax)

**\*\*\*\*\* EXHIBIT D \*\*\*\*\***

Form **W-7P**  
(Rev. August 2007)  
Department of the Treasury  
Internal Revenue Service

## Application for Preparer Tax Identification Number

<b>1 Name</b> (Type or print)	Last name	First name	Middle name/Initial			
<b>2 Address (residence)</b>  <input type="checkbox"/> Check here if address is new	Street address. Use a P.O. box number only if the post office does not deliver mail to your street address.  City or town, state/province, and, if outside the U.S., country. Include ZIP or postal code where appropriate. Do not abbreviate name of country.					
<b>3 SSN and Date of Birth</b>	SSN <input type="text"/> <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> - <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/>		Date of birth (month, day, year) / /			
<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this application, and to the best of my knowledge and belief, it is true, correct, and complete. Further, I certify that I will use my preparer tax identification number only to identify myself on returns or claims for refund that I prepare for compensation.  <table border="1"> <tr> <td data-bbox="423 793 938 898">Your signature</td> <td data-bbox="938 793 1170 898">           Date (month, day, year)            MM DD YYYY            / /         </td> <td data-bbox="1170 793 1492 898">           Phone number            ( )         </td> </tr> </table>			Your signature	Date (month, day, year) MM DD YYYY / /	Phone number ( )
Your signature	Date (month, day, year) MM DD YYYY / /	Phone number ( )				

### Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of form.** Use this form to apply for a preparer tax identification number (PTIN) **only** if you are a paid tax return preparer and you do not want to disclose your social security number (SSN) on returns you prepare. If you use a PTIN, you will meet the requirement under section 6109(a)(4) of furnishing your identifying number on returns you prepare. The PTIN cannot be used in place of the employer identification number (EIN) of the tax preparation firm.

**Note.** You are not required to get a PTIN. If you prefer, you may continue to use your SSN on tax returns you prepare. However, you must use either an SSN or PTIN on returns you are paid to prepare. Do not write "PTIN applied for" in the *Paid Preparer's Use Only* section of the return. Certain states and localities may not accept the PTIN as satisfying a requirement for a preparer identification number on their tax returns.

### How To Apply

- **Online.** Request a PTIN online at [www.irs.gov](http://www.irs.gov). Click on *Tax Professionals* then on the link for e-services. Once you have registered, follow the online instructions to have a PTIN assigned.
- **By mail.** Complete Form W-7P and send it to:  
Internal Revenue Service  
P.O. Box 9003  
Holtsville, NY 11742-9003
- **By fax.** Complete Form W-7P and fax it to 1-631-687-3850.

Regardless of how you applied, you will receive your PTIN by mail only. If you have not heard from the IRS within 6 weeks after applying for your number, you may call 1-800-829-1040 to check on the status of your application.

**Privacy Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. Section 3710 of the Internal Revenue Service Restructuring and Reform Act of 1998 allows the use of a PTIN. If you request a PTIN, you must give us the information requested on this form; we need it to properly respond to your request. Under section 6109, you must provide your social security number on Form W-7P. Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, and to cities, states and the District of Columbia for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism. If you do not provide all of the requested information, we may be unable to process your request.



**\*\*\*\*\* EXHIBIT E \*\*\*\*\***

A-681

2101

074HJOSmsT

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
-----x

3 UNITED STATES OF AMERICA,

4 v.

S2 04 Cr. 1002 (CLB)

5 RICHARD JOSEPHBERG,

6 Defendant.  
7 -----x

8 White Plains, N.Y.  
9 April 17, 2007  
9:45 a.m.

10 Before:

11 THE HONORABLE CHARLES L. BRIEANT,

12 District Judge

13  
14 APPEARANCES

15 MICHAEL J. GARCIA

16 United States Attorney for the  
17 Southern District of New York

18 STANLEY J. OKULA, JR.

19 Assistant United States Attorney  
20 and

DEPARTMENT OF JUSTICE TAX DIVISION

21 ANDREW J. KAMEROS

22 Trial Attorney

23 JARED J. SCHARF

24 ADAM SCHARF

25 Attorneys for Defendant

RICONDA & GARNETT

Attorneys for Defendant

MICHAEL T. SULLIVAN

A-702

2284

Rebuttal Summation - Mr. Okula

074HJOSms

1 motive was? "I just wanted to help the guy out. I was stupid.  
2 I made a mistake. I knew the net operating losses were wrong.  
3 I didn't think we would get caught. But I did it. I did it,  
4 anyway."

5 Usually, in cases where you have cooperating  
6 witnesses, you have defense lawyers beating them up because  
7 they admit so many other crimes that we're up here defending  
8 them by saying: "Forget the other crimes here. What else did  
9 he do?"

10 They had a chance to go out and look to see if he did  
11 anything wrong with anyone else's return. You didn't see  
12 anything else. The other thing that he got in trouble with --  
13 and it was all cleared up -- was the thing with his own return,  
14 where the IRS made a mistake.

15 So what were Fox's motives? You saw him testify.  
16 He's a pretty strong-willed guy. You think we cowed him into  
17 pleading guilty? That's a pretty powerful charge by  
18 Mr. Sullivan and Mr. Scharf. What they're saying, in essence,  
19 is that we suborned perjury, that we would knowingly put  
20 somebody on the stand to lie to frame Richard Josephberg? I  
21 mean, who is Richard Josephberg? Is he Leona Helmsley? Am I  
22 going to get my name on the front page of the Law Journal or  
23 The New York Times if he gets convicted? Am I going to throw  
24 away a 17-year career in the Justice Department just to get  
25 another tax evader? That's what they want you to believe.

**\*\*\*\*\* EXHIBIT F \*\*\*\*\***

Yehezkel Israel Elia  
148 Mamaroneck Avenue  
White Plains, NY 10601  
(914) 946 - 5200

**PETITION FOR RELIEF FROM THE SEIZURE**

August 17, 2001

U.S. Customs Service  
Director, Fines, Penalties & Forfeitures  
Building 77, Room 200  
JFK Airport  
Jamaica, NY 11430

Dear Director,

I am requesting relief from the forfeiture of my \$42,000, based on the following.

In 1993 and 1994, when I was experiencing business difficulties, my mother lent me \$100,000. My mother, a citizen and resident of the State of Israel, keeps her savings in United States currency due to the political and economic climate in Israel. She advanced me the money in United States currency as explained in the accompanying affidavit. This affidavit was prepared for and submitted to the Internal Revenue Service during an examination of my 1994 tax return.

In January of this year my mother informed me that my brother, Yoel, was experiencing severe financial hardships. She requested that I repay all or part of the money she lent me several years ago so that she could lend it to my brother. She requested that the money be returned in U.S. currency. I immediately began to accumulate all the funds I could in order to repay my mother.

I was able to accumulate the money through two ways. A residential building that I own was recently fully occupied and gave me cash flow of approximately \$3,500 a month or \$25,000 over the seven month period. I informed my mother that in my annual visit to her I would bring \$25,000. My mother was dismayed and told me that my brother was at risk of losing his home if she couldn't give him \$50,000. I then took whatever funds I could from my driving school, Center for Safety, as an advance.

I object to the U.S. Customs Service taking my money based on the fact that prior to my arrival to the airport I was unaware of the reporting requirement for taking \$10,000 in U.S. currency out of the United States. When the officer from

JFK-FPP/ALH/280412-35

U.S. Customs Service  
August 17, 2001

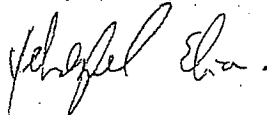
Page 2

the U.S. Customs service approached me and had me sign the form saying I was carrying less than \$10,000 in U.S. currency, I was flustered. I was worried about missing my flight. I thought that if I told the officer that I was carrying \$44,000 in U.S. currency, he would detain me and cause me to miss my flight. I had no one to leave the money with. I foolishly thought that if I signed the form, I would not miss my flight.

I would like to point out that I did not try to hide the money but I carried the money in my carryon bag. I was travelling to Israel, where due to tight security measures, it is guaranteed that hand luggage will be examined. I believe this shows that it was not my intent to break any law.

Based on the above facts and my sincere promise that I will never take an amount greater than \$10,000 in U.S. currency out of this country, I respectfully request that my money be returned to me. It is also very important that the money be returned to me as soon as possible. My brother had promised his creditor payment in July. As soon as the U.S. Customs Service releases my money, I will wire transfer the funds to my mother in Israel.

Respectfully submitted,



Yehezkel Israel Elia

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

v.

07 Cr. 543 (KMK)

YEHEZKEL ELIA and  
DAVID ELYAHO,

**AFFIDAVIT OF SERVICE**

Defendants.

-----X

STATE OF NEW YORK )  
COUNTY OF WESTCHESTER ) ss:

CHRISTINA A. OGANDO, being duly sworn, deposes and says:

1. I am not a party to this action and I am over the age of 18.
2. On May 22, 2008, I served a true copy of the Motion in Limine in behalf of defendant Yehezkel Elia, together accompanying Declaration of Jared J. Scharf and annexed exhibits, and the supporting Memorandum of Law, by Federal Express overnight delivery to the following persons at the following addresses:

Cynthia Dunne  
Assistant United States Attorney  
United States Attorney's Office  
300 Quarropas Street  
White Plains, New York 10601

Joseph A. Vita, Esq.  
327 Irving Avenue  
Port Chester, New York 10573



CHRISTINA A. OGANDO

Sworn to before me on this  
22<sup>nd</sup> day of May, 2008

  
Notary Public

**KATHERINE SIMICEVIC**  
Notary Public, State of New York  
No. 4956357  
Qualified in Westchester County  
Commission Expires September 18, 2009